

Deficiency Progress Report – Update 3

Report Submitted: 11-3-09

CUPA: Tulare County Environmental Health

Evaluation Date: October 28 and 29, 2008

Evaluation Team:

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Corrected Deficiencies: 1, 2, 3, 4

- 1. Deficiency:** The CUPA is not taking enforcement actions against handlers who are not submitting annual inventories or annual certifications of no change to their inventories. Of the 13 files reviewed, 4 did not contain a current annual inventory or annual certification of no change.

Preliminary Corrective Actions: By April 29, 2009, the CUPA will review its business plan files to determine how many handlers are out of compliance in regards to annual inventory/certification to determine the number of handlers that are not in compliance with the annual inventory reporting requirements.

In the CUPA's 2nd progress report, include the number of enforcement actions taken against handlers that are not in compliance with the annual inventory reporting requirements.

CUPA's 1st Update (2-27-09): The CUPA is closely monitoring submissions of Calendar Year 2009 annual hazardous material inventories and certifications. As of the date of this report, 628 of a total of 1,258 handlers (50%) had submitted current hazardous material inventories or certifications. On March 2, 2009, the CUPA will mail a reminder notice to all handlers that have not submitted a Calendar Year 2009 annual hazardous material inventory or certification. The reminder will warn of possible enforcement if the annual hazardous material inventory or certification April 1, 2009. If the handler does not submit the annual hazardous material inventory or certification by April 1, 2009, a Notice of Violation will be issued and a final deadline of May 1, 2009, will be established. Handlers not complying with the final deadline of May 1, 2009, will be subject to issuance of an Administrative Enforcement Order.

The CUPA will review compliance of handlers with annual inventory/certification requirements on an ongoing basis, and will include the number of enforcement actions taken against handlers that are not in compliance with the annual inventory reporting requirements in the 2nd progress report.

Cal/EPA's 1st Response: Please refer to Cal EMA's response.

- **Cal EMA's Response:** The actions taken by the CUPA appears to be a successful measure in correcting this deficiency. 50% have submitted current hazardous materials inventory or certifications, in the CUPA's next progress report, please report the effectiveness of the reminder notice and any updated numbers. Keep up the good work!

CUPA's 2nd Update (5-28-09): The CUPA has utilized graduated enforcement to obtain compliance with the annual Business Plan update requirement. On March 9, 2009, the CUPA mailed the Past Due Reminder letter (Attachment 1) to 370 facilities that had not submitted a current annual hazardous material inventory or certification.

On April 7, 2009, the CUPA mailed the Notice of Violation letter (Attachment 2) to 198 facilities that had received the Past Due Reminder letter but had not yet submitted a current annual hazardous material inventory or certification.

On May 26, 2009, the CUPA sent the Notice of Administrative Office Hearing letter (Attachment 3) by certified mail to 74 facilities that had received both the Past Due Reminder letter and Notice of Violation letter, but had not yet submitted a current annual hazardous material inventory or certification. The Notice of Administrative Office Hearing letter states that a \$355.00 fee will be charged to the handler's account if the annual update is not submitted prior to the scheduled hearing date for the facility. The Administrative Office Hearings will be held from June 23 through June 26, 2009.

Cal/EPA's 2nd Response: Cal/EPA and Cal EMA consider this deficiency corrected. Please refer to Cal EMA's responses.

- **Cal EMA's Response:** The actions implemented by the CUPA show a graduated series of enforcements in regards to the business plan; therefore, Cal EMA considers this deficiency to be corrected. Keep up the good work.

2. **Deficiency:** The CUPA has not maintained the state mandated inspection frequency for all CalARP facilities. There were numerous facilities files reviewed that had inspection reports that were over 3 years old.

Preliminary Corrective Actions: By January 29, 2009, the CUPA will submit an action plan to Cal/EPA which will outline how the CUPA expects to reach the state mandated inspection frequencies for CalARP facilities.

By June 30, 2009, the CUPA will complete at least one-third of their CalARP facility inspections.

CUPA's 1st Update (2-27-09): The CUPA has developed the following action plan outlining how the CUPA expects to reach the state mandated inspection frequencies for CalARP facilities.

There are currently 105 facilities subject to the CalARP surcharge, 92 of which have submitted Risk Management Plans (RMPs). One third of the total number of 105 CalARP facilities equals an annual requirement of 35 routine CalARP inspections. The CUPA has performed 18 routine CalARP inspections between the start of the reporting year (i.e., July 1, 2008) and the date of this report. Therefore, the CUPA will need to perform an additional 17 routine CalARP inspections to meet state-mandated triennial inspection frequencies. The CUPA believes that this will be achieved in that all existing inspectors have received additional CalARP training, and are now qualified to perform inspections of these facilities. Also, a former Tulare County CUPA inspector has been rehired and will begin work on March 2, 2009. This person has extensive experience with the CalARP program and will be an additional asset to attain state-mandated inspection frequencies by June 30, 2009.

Cal/EPA's 1st Response: Please refer to Cal EMA's response.

- **Cal EMA's Response:** With the hiring of new staff, this deficiency appears to be on its way to being corrected. The CUPA states that it feels that it can achieve the goal of inspecting the remaining 17 facilities, to reach the state mandated inspection frequencies, please in the next progress report, report on the number of inspections completed and how many need to be completed to correct this deficiency. Keep up the good work!

CUPA's 2nd Update (5-28-09): There are currently 105 facilities subject to the CalARP surcharge, 92 of which have submitted Risk Management Plans (RMPs). One third of the total number of 105 CalARP facilities equals an annual requirement of 35 routine CalARP inspections. The CUPA has performed 36 routine CalARP inspections between the start of the reporting year (i.e., July 1, 2008) and the date of this report.

Cal/EPA's 2nd Response: Cal/EPA and Cal EMA consider this deficiency corrected. Please refer to Cal EMA's responses.

- **Cal EMA's Response:** Cal EMA feels that the CUPA has reached the state mandated inspection frequency by conducting inspections on 1/3 of the facilities within the CUPA's jurisdiction. With that being said, Cal EMA considers this deficiency to be corrected. Keep up the good work.

3. **Deficiency:** The CUPA has not inspected all Tiered Permitting (TP) facilities within the state mandated triennial inspection frequency.

Preliminary Corrective Actions: The CUPA shall ensure that all TP facilities are inspected by September 30, 2009. The CUPA shall indicate when the goal has been achieved in the next fiscal year (FY) 08/09 Annual Inspection Summary Report 3.

CUPA's 1st Update (2-27-09): The CUPA currently has eight tiered permit facilities. The CUPA has performed 3 routine tiered permit facility inspections between the start of the reporting year (i.e., July 1, 2008) and the date of this report. In addition, four of the seven CUPA inspectors have received the following training applicable to tiered permit facilities during FY 2008/09.

7/23/2008	RCRA Large Quantity Generator Inspection Training	Fresno, CA: NES	8 hrs.
9/29/2008	Training On The New Permit By Rule For Treatment Of Aqueous Wastes Containing Cyanides	Evelia Rodriguez, Asha Arora, DTSC	7 hrs.

The inspector with the bulk of the tiered permit facilities also received the following training at the CUPA Conference:

1/26/2009	Electroplating Facility Inspection Tutorial M-B1	CUPA Conference	2 hrs
1/28/2009	Tiered Permitting Inspector W-B2	CUPA Conference	4 hrs

The CUPA is committed to inspecting all tiered permit facilities during FY 2008/09 and will report attainment of this goal on the Annual Inspection Summary Report 3.

Cal/EPA's 1st Response: The CUPA is making progress toward correcting this deficiency. On the next progress report, please report the total number of tiered permitting facilities the CUPA inspected for FY 08/09.

CUPA's 2nd Update (5-28-09): The CUPA currently has seven tiered permit facilities. The CUPA has performed 3 routine tiered permit facility inspections between the start of the reporting year (i.e., July 1, 2008) and the date of this report. The CUPA is committed to inspecting all tiered permit facilities during FY 2008/09 and will report attainment of this goal on the Annual Inspection Summary Report 3.

Cal/EPA's 2nd Response: The CUPA is continuing to make progress toward correcting this deficiency. Please continue to report the CUPA's tiered permitting inspection progress on the next progress report.

CUPA's 3rd Update (11-3-09): The CUPA inspected each tiered permit facility during FY 2008/09. A copy of the *Annual Inspection Summary Report* (Report 3) is attached for your reference.

Cal/EPA's 3rd Response: Cal/EPA and DTSC consider this deficiency corrected.

4. **Deficiency:** The CUPA is unable to document in certain instances that some facilities that have received a notice to comply citing minor violations have returned to compliance (RTC) within 30 days of notification. Either the business must submit a RTC certification in order to document its compliance or in the absence of certification the CUPA may reinspect the facility to confirm that compliance has been achieved.

Preliminary Corrective Actions: The CUPA will ensure that all facilities with minor violations self-certify that they have RTC by receipt of a RTC certification. In the absence of a RTC certification, the CUPA may document compliance with a reinspection report.

By April 29, 2009, please submit to Cal/EPA two or three examples of RTC certifications or other follow-up documentation.

CUPA's 1st Update (2-27-09): Please find attached four examples of RTC certifications.

Cal/EPA's 1st Response: Cal/EPA reviewed the RTC certifications submitted by the CUPA. The certifications are satisfactory. On the next progress report, please report the total number of facilities with minor violations that are greater than 30 days outstanding.

CUPA's 2nd Update (5-28-09): As of March 31, 2009 there were 47 Business Plan, 27 Hazardous Waste Generator, and 71 Underground Storage Tank facilities with violations greater than 30 days outstanding. On April 15, 2009, the CUPA mailed the Notice of Violation letter (Attachment 4) to each facility with violations greater than 30 days outstanding. Each Notice of Violation was accompanied by a Return to Compliance form listing the violations and corrective action for each facility. The complete listing of all violations and corrective actions by program element are listed in (Attachments 5 – 7).

On May 26 2009, the CUPA mailed the Notice of Administrative Office Hearing letter (Attachment 8) to each facility that had received the Notice of Violation letter but had not yet submitted documentation of return to compliance. These comprised 11 Business Plan, 9 Hazardous Waste Generator, and 26 Underground Storage Tank facilities. The Notice of Administrative Office Hearing letter states that a \$355.00 fee will be charged to the handler's account if the annual update is not submitted prior to the scheduled hearing date for the facility.

The Administrative Office Hearings will be held from June 15 through June 22, 2009.

Including the routine inspections conducted since April 1, 2009, there are currently 14 Business Plan, 9 Hazardous Waste Generator, and 29 Underground Storage Tank facilities with minor violations greater than 30 days outstanding. In accordance with the *Inspection And Enforcement Plan*, the CUPA will identify facilities with documented minor violations that have not been corrected within the stipulated deadlines on a quarterly basis (at minimum). The CUPA will issue these facilities a Notice of Violation letter with accompanying Return to Compliance form. If the facility still fails to comply, the CUPA will either issue Notice of Administrative Office Hearing letter or take other appropriate formal enforcement pursuant to the *Inspection And Enforcement Plan*.

Cal/EPA's 2nd Response: Cal/EPA and DTSC consider this deficiency corrected.